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13 PRODUCTIONS CO. LTD.

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 UM CORPORATION, a Japanese
18 corporation,

19 Plaintiff,

20 vs.

21 TSUBURAYA PRODUCTIONS CO.
22 LTD., a Japanese corporation,

23 Defendant.

CASE NO. 2:15-cv-03764-AB-AJW

24 **DECLARATION OF PEIGUO**
25 **SHEN IN SUPPORT OF**
26 **TSUBURAYA'S OPPOSITION TO**
27 **UMC's MOTION FOR JUDGMENT**
28 **ON THE PLEADINGS OR, IN THE**
ALTERNATIVE, SUMMARY
JUDGMENT

Trial Date: August 22, 2017

quinn emanuel

1 TSUBURAYA PRODUCTIONS CO.
2 LTD., a Japanese corporation,

3 Counterclaimant,

4
5 vs.

6 UM CORPORATION, a Japanese
7 corporation; ULTRAMAN USA, INC.,
8 a California corporation; SOMPOTE
9 SAENGDUENCHAI, a Thai individual;
10 GOLDEN MEDIA GROUP, INC., a
11 California corporation; TIGA
12 ENTERTAINMENT COMPANY,
13 LTD., a Hong Kong corporation; and
14 DOES 1-10,

15 Counterdefendants.
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DECLARATION OF PEIGUO SHEN

I, Peiguo Shen, declare as follows:

1. I make this declaration of personal, firsthand knowledge, and, if called and sworn as a witness, I could and would testify competently thereto.

2. I am an attorney licensed to practice in China, and a partner at the Shenda Partners Law Firm. I have been a practicing attorney for approximately 20 years. I represented Tsuburaya in the Chinese litigations referenced in the motion filed by UMC in this matter.

3. I have reviewed the brief filed by UMC relating to the foreign judgments regarding Ultraman, including in China. In that brief, UMC said with respect to the Chinese lawsuit that "no party requested recognition of any prior Judgment in the Chinese intermediate court." UMC also said that Tsuburaya failed to follow a procedure to allow the Thai judgment to be followed by the Chinese courts. These statements are incorrect. Rather, Tsuburaya did ask that the Thai judgment be recognized, but the Guangdong Province Higher People's Court and Supreme People's Court declined to do so because there was no procedure or rule in China that would allow them to do so.

4. Chinese courts do not have a general practice or policy of recognizing foreign judgments. Moreover, under Chinese law, there was no precedent where a Chinese court had recognized a judgment relating to intellectual property from a foreign court, or any precedent where a Chinese court has recognized that a Thai judgment has preclusive effect in China.

5. CPL Article 281, cited by UMC in its brief, provides that a foreign judgment may be recognized if an appropriate bilateral treaty or reciprocity agreement is in place. CPL Article 281 reads: "If a legally effective judgment or ruling made by a foreign court seeks the recognition and enforcement of a people's

1 court of the People's Republic of China, the party may directly apply to the
2 intermediate people's court of the People's Republic of China that has the
3 jurisdiction over the case for the recognition and enforcement, or the foreign court
4 may, according to the provisions of the international treaties concluded or acceded
5 to by the People's Republic of China or based on the principle of reciprocity,
6 request the recognition and enforcement of a people's court."

7 6. However, this is merely a procedural mechanism and places no
8 independent obligation on the intermediate court to follow any foreign
9 judgment. While there is an agreement between Thailand and China, it has not
10 been interpreted by any Chinese courts to require that a Thai judgment have
11 preclusive effect in China. Even United States sources have noted that Chinese
12 courts will not often recognize judgments of other countries. *See, e.g.,*
13 <http://us.practicallaw.com/8-619-0132#a787377>:

14
15 Foreign judgments can be recognised and enforced in China under
16 Article 281 of the CPL, which requires either applicable international
17 treaties/conventions or reciprocity as a basis for recognition and
18 enforcement. As China has yet to enter into bilateral treaties or
19 conventions for recognition and enforcement of judgments with its
20 major trading and investment partners, and reciprocity is difficult to
21 establish before Chinese courts (rarely attempted by judgment creditors,
22 partly for this reason), there are not many actual cases of recognition
23 and enforcement of foreign judgments.

24 7. Specifically, the Intermediate People's Court declined to recognize the
25 Thai judgment because the agreement between Thailand and China, it held, is
26 limited to matters of property in interpersonal relationships, such as a divorce. The
27 court held that judgment relating to intellectual property, such as the Thai judgment,
28 was not covered by the agreement between the countries, and therefore there is no
supporting bilateral treaty or other reciprocity agreement between the People's
Republic of China and Thailand. Accordingly, the court held there is no
precedent in the Chinese courts to recognize the Thai judgment.

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1 8. In the initial suit between Chaiyo and Tsuburaya, Tsuburaya petitioned
2 the Guangzhou City Intermediate People's Court (the court of first instance) to
3 recognize the civil judgment of the Supreme Court of Thailand pursuant to
4 Agreement between the People's Republic of China and Thailand on Judicial
5 Assistance in Civil and Commercial Matters, and to find that the 1976 Contract
6 purportedly signed by Noboru Tsuburaya was not authentic. (Dkt. 77-8, Civil
7 Ruling at 4.) The Intermediate People's Court ruled in favor in Tsuburaya.
8 Although it did not explicitly recognize the judgment of the Supreme Court of
9 Thailand, the intermediate court credited the appraisal report issued by the Thai
10 Police Bureau General Office, which had been accepted by the Thai Supreme Court,
11 and held that the 1976 Contract was not authentic. (*Id.* at 12.)

12 9. Therefore, UMC's argument that "no party requested recognition of
13 any prior Judgment in the Chinese intermediate court" (Mot. at 18) is not correct.
14 To the contrary, Tsuburaya specifically requested that the Intermediate People's
15 Court recognize the judgment of the Thai Supreme Court.

16 10. Following Chaiyo's appeal, the court of second instance, the
17 Guangdong Province Higher People's Court, reversed the earlier ruling of the
18 Intermediate People's Court. The court of second instance also held that there was
19 no procedural mechanism by which to recognize the Thai judgment, and that there
20 was no procedure requiring it to do so. The Higher People's Court therefore held
21 that "the effectiveness of Japanese and Thai court judgments has not been
22 recognized by Chinese civil lawsuit procedures [and] the judgments from these two
23 courts do not have any legal force within China, and they are non-binding." (Dkt.
24 77-8, Civil Ruling at 17.) It further declined to recognize the appraisal report of
25 the Thai Police Bureau General Office, holding that "China lacks a legal basis for
26 directly confirming the appraisal findings of the Thai appraisal institution, and
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1 judgements from Thai courts are non-binding within China. Therefore appraisal
2 findings issued from Thai appraisal institutions cannot be accepted.” (*Id.*)

3 11. Tsuburaya appealed this issue to the Supreme People’s Court.
4 However, the Supreme Court held that Article 281 only permits an Intermediate
5 Court to determine the preclusive effect of a foreign judgment, as the Intermediate
6 Court had done. (*Id.* at 28.) Accordingly, the Supreme People’s Court declined
7 to review the decision of the Intermediate People’s Court. Therefore, when the
8 Supreme Court noted that the application for recognition of the Thai judgment
9 submitted by Tsuburaya “does not conform to the aforementioned stipulations, and
10 surpasses the scope of investigation of this case by this court,” it meant that the issue
11 of whether China ought to recognize the judgment of the Thai Supreme Court was
12 not within the jurisdiction of the Supreme People’s Court.

13 12. The Chinese legal system does not have discovery. There is no
14 mechanism to obtain documents from the other party, or to take
15 depositions. Accordingly, in the Chinese lawsuits relating to Ultraman, Tsuburaya
16 had no procedure available to it through which it could obtain documents or
17 deposition testimony from Sompote or UMC (or other witnesses) that would show
18 the court that Sompote had forged the 1976 Agreement.

19 13. I declare under penalty of perjury under the laws of the United States of
20 America that the foregoing is true and correct.

21 Executed on this 10th day of August, 2016, at Shanghai.

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23 Peiguo Shen
24 Peiguo Shen